



# Co-operatives Act 1996

## Untraceable members

We are aware that the issues of untraceable members and unclaimed monies cause distress to co-operatives more than almost any other. The cost of attempting to find an untraceable member can outweigh the interest that member has in the co-operative. What changes will flow from the commencement of the Co-operatives Act 1996?

### Untraceable Members

The introduction of active membership provisions in the new legislation will assist co-operatives in dealing with untraceable members.

### Declarations by Board

If the whereabouts of a member has not been known for up to 3 years (depending on the rules) the Board must declare the membership cancelled. This would occur, for example, if there had been no contact for that period of time and no advice as to change of address. There must be a simultaneous declaration by the Board that any shares held by the member are forfeited.

The declaration may be deferred for 12 months if there are unusual circumstances or if a proposed active membership provision would make the membership valid.

The co-operative is unable to cancel membership if it is insolvent. Also the Supreme Court of Victoria is empowered to order reinstatement of membership if it considers that the cancellation was unreasonable.

### Notice

The member whose membership is to be cancelled must be given at least 28 days' prior notice. Notice does not have to be given where the member's whereabouts are unknown to the co-operative and the amount required to be repaid to the member does not exceed \$50.

The notice may be given by publication in a newspaper, which circulates generally in Victoria, if the member is untraceable or the co-operative is non-trading (section 460).

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*The Federation strongly recommends that each co-operative obtains its own professional advice to ensure that the specific circumstance of the co-operative are taken into account.*

INFORMATION



# Co-operative Federation of Victoria Ltd

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## Requirement to Repay Former Member (s.138)

The co-operative is required to repay any amount due (including any amount paid up on shares) within 12 months from the date of cancellation. If the Board considers that repayment would adversely effect the financial position of the co-operative, or if the Board and former member agree, the amount due may be applied as a:

- Deposit - (if the co-operative is a deposit taking co-operative\*); or
- Debenture which may be held for up to 10 years; or
- Donation - although the co-operative may only appropriate the amount due if the former member consents in writing that it be a donation.

\*Meaning those Co-operatives which had the power to accept deposits before the commencement of the new Act.

## Rule Provisions

The rules can provide for an annual subscription from each member which would serve to reduce the amounts owing to that member. In addition, a rule could make provision for the reasonable cost of looking for untraceable members to be deducted from the amounts owing to them.

## Unclaimed Monies

The procedure which follows if members have still not been found after the above procedures have been followed and the amounts must be paid (ie. as soon as the deposit or debenture can be repaid without adverse financial effect on the co-operative) is set out below:

- amounts over \$100 must be advertised in the Government Gazette during the next March;
- the amount is to be paid to the Registrar of Unclaimed Moneys 12 months from 31 March of that year.
- The co-operative is protected from liability to any third party if the procedure in the Unclaimed Moneys Act 1962 (Vic) is followed.

No liability flows to any person by reason of their payment of money to the Consolidated Fund or the Registrar of Unclaimed Moneys or any other action by the Registrar in good faith pursuant to the provisions of the Unclaimed Moneys Act.

A co-operative is required to keep a register of any payments to the Registrar. These payments will be placed to the credit of a Consolidated Fund. It can reimburse itself from the pool of any unclaimed moneys it holds for expenses incurred in advertising in the Gazette.

## Liability

Failure to make the declarations above will result in a \$2,000 fine for each director who has failed to act diligently. □